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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

- and -

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

Case No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**SUPPLEMENTAL OBJECTION OF THE
OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO THE DEBTORS'
SUBROGATION SETTLEMENT
AND RSA MOTION**

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric
Company
☒ Affects both Debtors

** All papers shall be filed in the Lead
Case, No. 19-30088 (DM).*

Date: November 13, 2019
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Docket Nos. 3992 & 4554

The Official Committee of Unsecured Creditors (the "UCC") hereby submits this
supplemental objection (the "Supplemental Objection") to the *Motion Pursuant to 11 U.S.C.*

1 §§ 363(b) and 105(a) and Fed. R. Bankr. P. 6004 and 9019 for Entry of an Order (I) Authorizing
2 the Debtors to Enter into Restructuring Support Agreement with the Consenting Subrogation
3 Claimholders, (II) Approving the Terms of Settlement with Such Consenting Subrogation
4 Claimholders, Including the Allowed Subrogation Claim Amount, and (III) Granting Related
5 Relief (the “RSA Motion”) [Docket No. 3992] as it applies to the Amended and Restated
6 Restructuring Support Agreement dated as of November 1, 2019 (the “Amended RSA”).¹ In
7 support of its Supplemental Objection, the UCC respectfully states as follows:

8
9 **SUPPLEMENTAL OBJECTION**

10 As the Court is aware, the proposed treatment of the Subrogation Claims in the Debtors’
11 Joint Chapter 11 Plan of Reorganization Dated November 1, 2019 (the “Debtors’ Plan”) [Docket
12 No. 4563] is premised on a settlement in the amount of \$11 billion that is required to be paid in
13 cash, is not subordinated to payments to the Other Wildfire Claimants and is coupled with third
14 party releases for the Subrogation Claimants.²

15
16 As an initial matter, while the UCC previously had no objection to a straight forward
17 settlement of all Subrogation Claims for \$11 billion dollars, given that the Kincade and other
18 postpetition fires are not included in the settlement, the Amended RSA no longer serves as a global
19 resolution of the claims of the Consenting Creditors.³ This change in circumstances raises the
20 question as to whether the settlement is now premature and should be reconsidered. The UCC
21 reserves its rights to further address this issue at the hearing.

22
23 In addition, the UCC continues to object to many of the “plan related” provisions that
24 remain embedded in the Amended RSA. Such provisions go well beyond providing the
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26 ¹ The UCC filed its initial objection to the RSA Motion on October 16, 2019 [Docket No. 4236] (the
27 “Initial Objection” and, together with this Supplemental Objection, the “Objection”). Capitalized terms
28 used but not defined herein have the meanings ascribed to them in the RSA Motion.

² The UCC leaves the issues related to the priority and releases largely to the TCC.

³ The definition of “Wildfires” only covers prepetition fires. Amended RSA § 1.

1 Subrogation Claimants with an allowed claim for \$11 billion dollars and instead act as a “poison
2 pill” that ties the Court’s hands with respect to confirming any plan of reorganization other than
3 the Debtors’ Plan, including the plan proposed by the TCC and the AHG (the “TCC/AHG Plan”)
4 and economically punishes other creditors that would prefer to vote for the TCC/AHG Plan.

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6 Accordingly, because the relief sought in the RSA Motion, if granted, improperly tilts the
7 balance in favor of the Debtors’ Plan, the UCC continues to oppose the RSA Motion as not being
8 in the best interests of the Debtors’ unsecured creditors.

9 **A. The RSA Motion Improperly Favors the Debtors’ Plan Over the TCC/AHG Plan.**

10 The Amended RSA, like the original RSA, contains a combination of lock-up covenants
11 and termination provisions intended to permit the proposed \$11 billion settlement to be
12 consummated only pursuant to the Debtors’ Plan, even if a competing plan, such as the TCC/AHG
13 Plan, provides for the same treatment to the Subrogation Claimants, *i.e.* \$11 billion dollars. The
14 Consenting Creditors must vote in favor of the Debtors’ Plan (Amended RSA § 2(a)(ii)), vote
15 against any alternative plan (Amended RSA § 2(a)(iii)), including the TCC/AHG Plan, and may
16 not take any action directly or indirectly to support any other plan (Amended RSA § 2(b)(ii)). The
17 Amended RSA further restricts the Consenting Creditors by not allowing them even to negotiate
18 with other creditor constituencies or participate in mediation unless it is “together” with the
19 Debtors (Amended RSA § 2(b)(ii)).
20

21 Moreover, the Amended RSA requires the Consenting Creditors to affirmatively “[s]upport
22 and cooperate with the Debtors[’] [efforts] to obtain confirmation of the [Debtors’] Plan”
23 (Amended RSA § 2(a)(i)), and not “delay, impede, or take any other action to interfere with the
24 acceptance or implementation of the [Debtors’] Plan” Amended RSA § 2(b)(i).
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26 The Consenting Creditors presumably would be required to take such actions in support of
27 the Debtors’ Plan, and against the TCC/AHG Plan (and any other plan), regardless of whether
28

1 (a) the Court were to determine that the TCC/AHG Plan should be confirmed instead of the
2 Debtors' Plan (either out of necessity because the Debtors' Plan has failed, or based on the
3 creditors' preference and the Court's consideration of various confirmation issues), or (b) the
4 TCC/AHG Plan (or some other plan) offers the same treatment to the Subrogation Claims as does
5 the Debtors' Plan.
6

7 Moreover, to the extent that the Debtors' Plan is not allowed either to be solicited or
8 confirmed by the Court, the termination provisions in the Amended RSA allow the Consenting
9 Creditors unilaterally to walk away from the \$11 billion settlement and assert the full \$20 billion
10 in damages that they have previously claimed. See Amended RSA § 5(a)-(d). Thus, even if they
11 are given the same treatment in any plan other than the Debtors' Plan, the Consenting Creditors
12 are not locked into having the Subrogation Claims allowed at \$11 billion, and they could well be
13 in front of this Court again seeking their full recovery notwithstanding the Amended RSA.
14

15 That the \$11 billion settlement only applies in the context of the Debtors' Plan is especially
16 problematic given that the Amended RSA effectively terminates any estimation proceeding with
17 respect to the Subrogation Claims. See Amended RSA §§ 2(a)(iv)–(v); § 2(b)(iii). In fact, the
18 Amended RSA expressly requires that the Subrogation Claims not be estimated. Amended RSA
19 § 2(a)(v). As a result, to the extent that the Debtors' Plan cannot or should not be confirmed, the
20 Court and creditors could be forced by the Consenting Creditors to have the Subrogation Claims
21 estimated in the context of a cram down under section 1129 of the Bankruptcy Code under an
22 extremely tight timeline given the June 30, 2020 deadline imposed by A.B. 1054.
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24 Taken together, these provisions of the Amended RSA fly in the face of the Court's
25 decision to lift exclusivity and allow both the Debtors' Plan and the TCC/AHG Plan to proceed on
26 parallel paths. By design, the Amended RSA seeks to foreclose any attempt to have the TCC/AHG
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1 Plan confirmed. It would also make negotiations among the parties, including with the Mediator,
2 that much more difficult.

3 These restrictions also run counter to the statements made by the Consenting Creditors'
4 counsel at the October 23, 2019 hearing that they would accept \$11 billion in cash, regardless of
5 what party offered it. As counsel recognized:

6
7 MR. FELDMAN: It goes to the fundamental issue, Your Honor, you raised when
8 you terminated exclusivity. Would this bring parties together or would it push them
9 apart? Unfortunately, it's had the latter reaction. But I would also say, **if it's eleven
billion dollars in cash, I accept.**

10 10/23/19 Hr'g Tr. at 228:4–12 (emphasis added).

11 Given the dual track on which the Debtors' cases are proceeding, any settlement of claims
12 approved by the Court should be for the benefit of creditors and the estates as a whole, and not just
13 for the benefit of a single plan proponent. This is especially true when so many material issues
14 remain unresolved.⁴

15 **B. The Amendments to the RSA Are Cumbersome and Vague.**

16 The amendments made to the original RSA were supposed to resolve the problem raised
17 in the Initial Objection that would arise if the Debtors prove to be insolvent but the estates
18 nonetheless remain obligated to pay the Subrogation Claimants \$11 billion in cash, even if such
19 payment would exceed their pro rata recovery and subject the estates to an administrative claim
20 for damages. This problem was said to be an "unintended consequence." 10/23/19 Hr'g Tr. at
21 178:22. Rather than clearly and unconditionally resolving this apparent "glitch", the Amended
22 RSA only adds confusion and complexity: before any of the insolvency exception provisions
23 apply in favor of the Debtors, the Amended RSA requires the Court to make a finding of the
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26 ⁴ See In re Smart World Techs., LLC, 423 F.3d 166, 175 (2d Cir. 2005) (concluding that while Debtors
27 may seek to enter into settlements under Bankruptcy Rule 9019, the Code "requires the debtor to
28 [manage the estate's legal claims] in a way that maximizes the estate's value" and that such duty "is
implicit in the debtor's role as the estate's only fiduciary").

1 Debtors' insolvency, presumably through a contested valuation hearing. Moreover, the
2 Subrogation Claimants continue to require that potential rights to subrogate their claims be waived.
3 Specifically, the Amended RSA states that:

4 provided that if the Bankruptcy Court determines the Debtors are insolvent, the
5 Debtors may file a revised plan that does not pay subrogation claimants \$11 billion
6 in cash on \$11 billion of allowed claims, provided, however, that such revised plan
7 shall not subordinate the class of Subrogation Claims to the class of IP Claims (an
8 "Insolvent Plan");

9 Amended RSA § 3(a)(i). And this is notwithstanding that the Subrogation Claimants have the
10 unilateral right to terminate their settlement if the Debtors are insolvent. Amended RSA § 5(c). It
11 is unclear how such a process would fit into the currently proposed confirmation timeline.
12 Regardless of its form and timetable, the process would likely be contentious, drawn out and give
13 the Consenting Creditors undue leverage in the face of the June 30, 2020 deadline imposed by
14 A.B. 1054.

15 CONCLUSION

16 The Debtors have stated repeatedly that they aspire to act as a fiduciary for all constituents:
17 "Your Honor, the debtors, unlike the tort committee, and unlike the ad hoc bondholder committee
18 are fiduciaries for all economic stakeholders in these cases." 10/23/19 Hr'g Tr. at 131:13-15).

19 As set forth above, the proposed settlement and Amended RSA are inconsistent with this
20 aspiration. The terms described above were negotiated by stakeholders solely seeking to advance
21 the confirmation of the Debtors' Plan without regard to the Court's decision to terminate
22 exclusivity, the possibility that the Debtors' Plan cannot or should not be confirmed, or the
23 preference of creditors in respect of the two competing plans. Rather than serve as a means to
24 streamline the confirmation process by facilitating a settlement for the benefit of all economic
25 stakeholders in the cases, the Amended RSA only serves to further complicate it.
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1 For the reasons set forth in this Objection, the UCC respectfully requests that the Court:
2 (i) sustain the Objection; (ii) deny the RSA Motion; and (iii) grant such other relief as may be
3 appropriate.
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5
6 Dated: November 11, 2019

7 **MILBANK LLP**

8 /s/ Gregory A. Bray
9 DENNIS F. DUNNE
10 SAMUEL A. KHALIL
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Unsecured Creditors*